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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/655,836	09/05/2003	Mark Allen Smerznak	CM2780	7071
27752	7590	11/16/2005	EXAMINER	
THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION WINTON HILL TECHNICAL CENTER - BOX 161 6110 CENTER HILL AVENUE CINCINNATI, OH 45224			HARDEE, JOHN R	
		ART UNIT		PAPER NUMBER
		1751		
DATE MAILED: 11/16/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/655,836	SMERZNAK ET AL.	
	Examiner	Art Unit	
	John R. Hardee	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-8 and 10-20 is/are pending in the application.
 - 4a) Of the above claim(s) 10-20 is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 1-8 is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date ____.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date ____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: ____.

Election/Restrictions

1. The restriction requirement is made FINAL.

Claim Rejections - 35 USC § 102

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-4 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Crutzen et al., US 5,599,473. See the examples in Table 1 and Example 3 which comprise fatty hydroxyesters, a magnesium paraffin sulfonate and an ethoxylated nonionic surfactant. The compositions of Example 3 further comprise magnesium sulfate, an electrolyte.

4. Claims 1-7 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by DE 4,009,534. See Example B3, which comprises 1% of hydrogenated castor oil (castor wax); 7% alkoxyolated sodium lauryl-myristyl sulfate blend; 3.9% alkoxyolated fatty alcohol, 5.0% alkoxyolated fatty ester and 47.1% of water. The sum of the amounts of alkoxyolated ester and alkoxyolated alcohol nonionics exceeds the amount of sulfate, meeting the limitations of claim 7.

5. Claims 1, 3, 4, 7 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Crutzen, US 5,419,842. See Examples 1, 2, 3B and 4B. Being a fatty ester containing hydroxyl groups, the pentaerythritol ditallowate appears to meet applicant's definition of a structuring agent.

Response to Arguments

6. Applicant's arguments filed October 20, 2005 have been fully considered but they are not persuasive. Applicant argues that the references do not disclose a non-polymeric, crystalline, hydroxyl-containing structuring agent. This is not persuasive because, not knowing exactly what these are, the examiner found suitable species of same in the specification. All of the cited references disclose species which were indicated suitable by applicant in the specification.

Applicant argues that the reference do not disclose that compositions according to the invention must be free of antiperspirant actives. This is not persuasive because the cited compositions are free of such actives. Such a disclosure is not required and, in fact, where such actives are not mandatory constituents, it would be obvious to exclude them.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 1751

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner, Dr. John R. Hardee, whose telephone number is (571) 272-1318. The examiner can normally be reached on Monday through Friday from 8:00 until 4:30. In the event that the examiner is not available, his supervisor, Dr. Yogendra Gupta, may be reached at (571) 272-1316.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



John R. Hardee
Primary Examiner
November 13, 2005